

REQUEST FOR APPROVAL

To: Scott Smithline
Director

From: Howard Levenson
Deputy Director, Materials Management and Local Assistance Division

Request Date: December 5, 2016

Decision Subject: Regulations Modifying the Designated Approved Collector Provision of the Covered Electronic Waste Recycling Program

Action By: December 20, 2016

Summary of Request

Staff seeks approval to file proposed emergency regulations with the Office of Administrative Law that would modify the Designated Approved Collector provision of the covered electronic waste (CEW) recycling payment system. The proposed regulations establish requirements intended to increase local government awareness and oversight of the CEW recovery activities conducted under a Designation and clarifies processes to establish, monitor, and end Designations.

Recommendation

Staff recommends approval of the proposed regulations that would modify the Designated Approved Collector provision of the covered electronic waste (CEW) recycling payment system. The proposed regulatory language can be found as Attachment 1 to this Request for Approval.

Upon approval of this request, staff will work with the Legal Office to make the necessary filings with the Office of Administrative Law to enact the proposed regulations under emergency authority.

Director Action

On the basis of the information contained in this Request for Approval, I hereby approve the staff recommendation and direct staff to file the proposed emergency regulations that modify the Designated Approved Collector regulations with the Office of Administrative Law pursuant to the authority contained in Public Resources Code (PRC) sections 42475 and 42475.2.

Scott Smithline
Director

Date Signed

Attachments

1. Proposed Regulatory Language Modifying Designated Approved Collectors (Title 14 of the California Code of Regulations (CCR) sections 18660.5, 18660.20, 18660.47, 18660.48, 18660.49, 18660.50 and 18660.51)
2. Designated Approved Collector Issue Paper (2014)
<http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1148&aiid=1049>
3. Reforming Designations: Issues to Consider (2015)
<http://www.calrecycle.ca.gov/Actions/PublicNoticeDetail.aspx?id=1640&aiid=1488>

Background and Analysis

Statutory Authority

The authority to adopt regulations to implement and administer the Electronic Waste Recycling Act is found in PRC § 42475. The proposed regulations will be adopted under emergency authority established by PRC § 42475.2 and will be finalized within two years. PRC § 42463(b)(2) defines “Authorized collector,” which includes a person or entity that provides services to a local government.

Program Background

The Electronic Waste Recycling Act of 2003 (PRC § 42460, *et seq.*) establishes a funding mechanism to provide for convenient collection opportunities and waste processing capabilities for certain electronic products discarded in California. Covered electronic devices (CED) include video display devices with screen sizes greater than four inches that have been determined by the Department of Toxic Substance Control (DTSC) to be hazardous when discarded. When CED are discarded, they become covered electronic waste (CEW). Under the CEW recovery and recycling payment program, approved collectors document the recovery of the CEW before transferring that material to an approved recycler. Approved recyclers receive and dismantle (cancel) the CEW, and subsequently submit claims for payment.

CEW must be discarded by a California Source to be eligible in the program. An approved collector confirms the eligibility and maintains records associated with the source of the CEW. Approved collectors that are California local governments are relieved of source-specific entries (e.g., names and addresses) in otherwise required collection logs. At the outset of the CEW program in 2005, local governments argued that this reduced source documentation allowance be extended to service providers acting on behalf of the local government. Regulations adopted in 2006 established the provision of a Designated Approved Collector to recover CEW on behalf of a local government and, in doing so, be similarly relieved of certain source documentation requirements.

Existing regulations specify how an approved collector secures a Designation from a local government and what the Designation must contain. This information is embodied in a Proof of Designation, that is used by the Designated Approved Collector to demonstrate its status, as well as inform recyclers that receive CEW collected by the Designated Approved Collector of associated source documentation requirements. The Proof of Designation has also been a required document within CEW recycling payment claims so that CalRecycle can track volumes and determined compliance of associated source documentation.

While this provision has generally worked well and reduced paperwork burdens, it lacks clarity with regard to who is authorized to issue and receive designations, and has not achieved a desired programmatic connection to local government household hazardous waste (HHW) programs. It also has created vulnerabilities in the CEW program when material is brought into the system beyond the scope of the designation or when collector operations are conducted without the local government’s knowledge or consent. The proposed regulations aim to remedy these issues and maintain the integrity of a useful tool in the CEW program.

General Intent of Proposed Rules

The consideration of issues that led to the development of these proposed regulations has spanned more than three years with numerous opportunities for stakeholder feedback. Stakeholder workshops addressing the issue were held annually from in 2013 to 2016. Attachment 2 (2014) is a white paper that identified several of the issues requiring reform, and Attachment 3 (2015) was crafted to foster discussion and inspire solutions. Staff is now proposing adjustments to the designation provisions to clarify limits and definitions of local operations, define appropriate representatives of local government, improve real-

time monitoring of CEW collection activities, and have meaningful accountability. Areas addressed include:

- Clarity of what a Designation is and its connection to local government HHW program function as reported in annual Form 303 reports;
- Clarity on authority within local government to issue Designations;
- Operational limitations and reporting requirements for Designated Approved Collectors;
- Specifications for the content of Proof of Designations;
- Conditions under which a Designation may be invalidated or revoked;

Proposed Regulations Main Provisions

With the exception of conforming edits to existing regulations contained in Articles 1 and 2.2 of Chapter 8.2, all proposed rules are placed within a new Article 7.

- Definitions (14 CCR § 18660.47)
- Additional Requirements for Designated Approved Collectors (14 CCR § 18660.48)
- Proof of Designation (14 CCR § 18660.49)
- Invalidation / Termination of Designation (14 CCR § § 18660.50 and .51)

Definitions

Designation and Local Government are defined so that appropriate parties may enter into a relationship whereby roles and responsibilities are well articulated.

(1) “Designation” means an arrangement that a Local Government initiates with an approved collector so that the approved collector shall act as a Designated Approved Collector and provide CEW collection services on behalf of the Local Government. The Designation constitutes a local program subject to Form 303 reporting requirements pursuant to Section 18751.2 of this Title. Details and evidence of the Designation are specified in a Proof of Designation pursuant to Section 18660.49(b).

(2) “Local Government” means a California city, county, city and county, a joint powers authority, or public service district responsible for household hazardous waste or residential waste management planning or services.

Additional Requirements for Designated Approved Collectors

This section clarifies source documentation requirements. A Designated Approved Collector is only relieved of specific source documentation requirements when acting within the scope of the Designation as outlined in the Proof of Designation.

This section also clarifies the connection between a Designation and a local HHW program. Under existing regulation not associated with the CEW program, Local Governments must annually submit Form 303 reports detailing the types of local HHW programs in their jurisdictions and the quantity of HHW recovered. This section requires the Designated Approved Collector to communicate their activities to the designating Local Government for incorporation into the Local Government Form 303 collection numbers. The intent here is to reinforce communication that should already be taking place. This communication helps ensure a Designated Approved Collector’s CEW recovery activities remain within the scope and jurisdictional boundary of the Designation.

Proof of Designation

The Proof of Designation is used to memorialize the establishment, length, and scope of a Designation (14 CCR § 18660.49(b)(1) through (3)). The Local Government representative is required to sign certification statements (14 CCR § 18660.49(b)(5)) asserting knowledge of applicable laws and regulations, and authority to execute agreements or contracts related to waste management on behalf of the Local Government. The Designated Approved Collector representative also signs a certification statement asserting they are an authorized signatory listed in the application for approval in the CEW program and that they will operate compliantly (14 CCR § 18660.49(b)(6)).

Invalidation and Termination

In general, the length of a Designation is the prerogative of the designating Local Government and is bound fundamentally by the Designated Approved Collector maintaining its approved status in the CEW recycling program. However, the proposed regulations provide for circumstances and processes that can lead to the Designation ending due to invalidation (14 CCR § 18660.50) or termination (14 CCR § 18660.51).

Stakeholder / Staff Discussions

Over the course of several years, program staff have had several opportunities to engage with stakeholders on the topic of designations.

- A question often discussed with stakeholders was whether the Designation provision was a necessary part of the CEW program. There have been no calls for its elimination, and the general consensus is to reform the provision in order to continue to offer a tool that both Local Governments and collectors appreciate.
- Stakeholders provided substantial feedback on the definition of Local Government, with interest aiming for specificity as well as inclusiveness. Program staff incorporated this feedback and crafted a definition that is flexible to include unique local government circumstances (such as San Francisco being both a city and county), as well as special districts, authorities, and agencies responsible for providing or planning public waste management services.
- Stakeholders suggested the original transition clauses of 120 and 90 days may be insufficient time to reengage with Local Government officials. These timelines have been increased to 180 and 150 days respectively (14 CCR § 18660.49(d) and (e)).
- Stakeholders suggested a means to decrease Proof of Designation paperwork during CEW transfers. 14 CCR § 18660.49(f) has since been amended to require ‘evidence of’ rather than ‘a copy of’ the Proof of Designation. The use of a Designation already significantly reduces source documentation paperwork. However, this wording allows for a possible future use of online verification while still accommodating the paper copies that the industry is familiar with.